No. 76-687

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

CHRISTIAN CAMENISCH, II, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners are attorneys and members of the District of Columbia bar who represent indigent defendants before the Superior Court of the District of Columbia pursuant to the Criminal Justice Act, 18 U.S.C. 3006A. On October 4, 1973, petitioners filed a complaint in the United States District Court for the District of Columbia, seeking an award of damages from the United States and declaratory and injunctive relief against the Chief Judge and four Associate Judges of the Superior Court of the District of Columbia.

The complaint alleged that between February 1, 1971, and October 4, 1973, petitioners had accepted appointments under the Criminal Justice Act to represent indigent defendants in cases before the Superior Court; that at the completion of their representation they submitted vouchers to the judges seeking compensation under the Act in the amount of $30 for each hour spent in court and $20 for each

hour reasonably expended out of court (these are the maximum hourly awards permitted by the Act); that the vouchers were approved by the judges but for an amount less than that claimed; and that the vouchers were paid by the Administrative Office of the United States Courts at that lesser amount. The complaint asserted that the reductions in petitioners' voucher requests violated the Fifth and Sixth Amendment rights of the criminal defendants that petitioners represent. Petitioners also alleged that the reduction of their voucher requests without notice or a hearing violated their own due process rights. (Pet. App. 2a-3a.)

The district court dismissed the complaint, and the court of appeals affirmed. The court of appeals unanimously held that petitioners had no legal claim against the United States for sums in excess of the amounts approved by the Superior Court judges (Pet. App. 4a; see *id.* at 10a). The court found that the Criminal Justice Act limits the role of the United States to the disbursement of funds on the basis of authorized vouchers and does not authorize the United States to pay sums in excess of the approved amounts (*ibid.*).

A majority of the court also held that it would be inappropriate for the district court at this time to entertain the claim for equitable relief against the judges of the Superior Court (*id.* at 5a). The court pointed out that after judgment in the district court had been entered, Congress had enacted a separate and independent Criminal Justice Act for the District of Columbia. Since the District of Columbia courts are in the early stages of administering this new statute, the court stated that "this is hardly the time for a federal court to prescribe * * * precisely how that act should be either interpreted or administered" (*ibid.*).

The court of appeals correctly held that petitioners failed to state a claim against the United States. The gravamen of

petitioners' complaint against the United States is that "[t]he United States could have, and should have declined to pay the reduced amount * * *" (Pet. 20). However, the court of appeals is correct that the United States is given no latitude under the Criminal Justice Act to review the validity of the amount of compensation given an attorney. Its sole duty under the Act is to pay the amount of money which appears on the face of authorized vouchers. 18 U.S.C. 3006A(j). This duty the United States has faithfully carried out and petitioners do not contend otherwise.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied insofar as it relates to petitioners' claims against the United States.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

JANUARY 1977.